

NOT INCLUDED IN  
BOUND VOLUMES

Marietta, GA

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

AMERICRAFT CARTON, INC.

and

Cases 10-CA-130244  
10-CA-130257

GRAPHIC COMMUNICATIONS CONFERENCE  
OF THE INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS UNION, LOCAL 527-S

ORDER DENYING MOTION TO TRANSFER  
PROCEEDINGS TO THE BOARD

This matter comes before the Board upon the joint motion of Respondent Americraft Carton, Inc.; Charging Party Graphic Communications Conference of the International Brotherhood of Teamsters, Local 527-S; and the General Counsel, in which the parties agree to waive a hearing and decision by an administrative law judge, and request that the proceedings be transferred to the Board for a decision based on the stipulated record.

On October 16, 2014, the General Counsel issued an order consolidating cases, consolidated complaint, and notice of hearing. The complaint alleges that the Respondent, a successor employer, recognized the Union as the collective-bargaining representative of the unit employees on January 6, 2014, but that since January 2, 2014, the Respondent implemented and has maintained changes in the unit employees' terms and conditions of employment, including changes to the grievance procedure, job assignments, pension contributions, wages, and health insurance premiums. The complaint further alleges that the Respondent made these changes

without prior notice to the Union and without affording the Union an opportunity to bargain over them, thereby violating Section 8(a)(5) and (1) of the Act.

On July 7, 2015, the parties filed a joint motion and stipulation of facts with the Board. Pursuant to Section 102.35(a)(9) of the Board's Rules and Regulations, the parties have waived a hearing before an administrative law judge and agreed to submit the record in this case directly to the Board for findings of fact, conclusions of law, and a Decision and Order. The parties have requested that the Board set a time for the filing of briefs.

After careful consideration, the Board has decided to deny the joint motion. As the parties' position statements show, the General Counsel intends to ask the Board to revisit the long-established "perfectly clear" successorship doctrine, to overrule the Board's decision in *Spruce Up Corp.*, 209 NLRB 194 (1974), *enfd. per curiam* 529 F.2d 516 (4th Cir. 1975), and to apply a new standard retroactively in this case.<sup>1</sup> But the General Counsel's position statement does not articulate the new standard that he would have the Board adopt, nor does it explain how the stipulated facts here would establish a violation of Section 8(a)(5) under a new standard. The Respondent's position statement, in turn, simply asserts that no violation has been established under current law – a proposition that the General Counsel does not address. Arguably, the General Counsel has implicitly conceded that no violation can be found under existing law, but this is not clear. In turn, additional facts might be required to determine whether there was a violation here under the General Counsel's to-be-articulated new standard. In these circumstances, it is not clear that the stipulation of facts actually "provides for a decision by the Board," within the meaning of Rule 102.35(a)(9). Cf. *Suzy Curtains, Inc.*, 310 NLRB 1245

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<sup>1</sup> The Board continues to follow *Spruce Up*. See, e.g., *GVS Properties*, 362 NLRB No. 194, slip op. at 5-6 (2015) (rejecting argument that finding successorship where employer was subject to worker-retention statute would further entail finding of "perfectly clear" successor status).

(1993) (denying motion to transfer proceedings where parties' stipulation contemplated that additional facts might be presented to the Board "by stipulation or otherwise").

ORDER

The joint motion to transfer proceedings to the Board is denied.

Dated, Washington, D.C., November 12, 2015.

By Direction of the Board:

Gary Shinnars

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Executive Secretary